

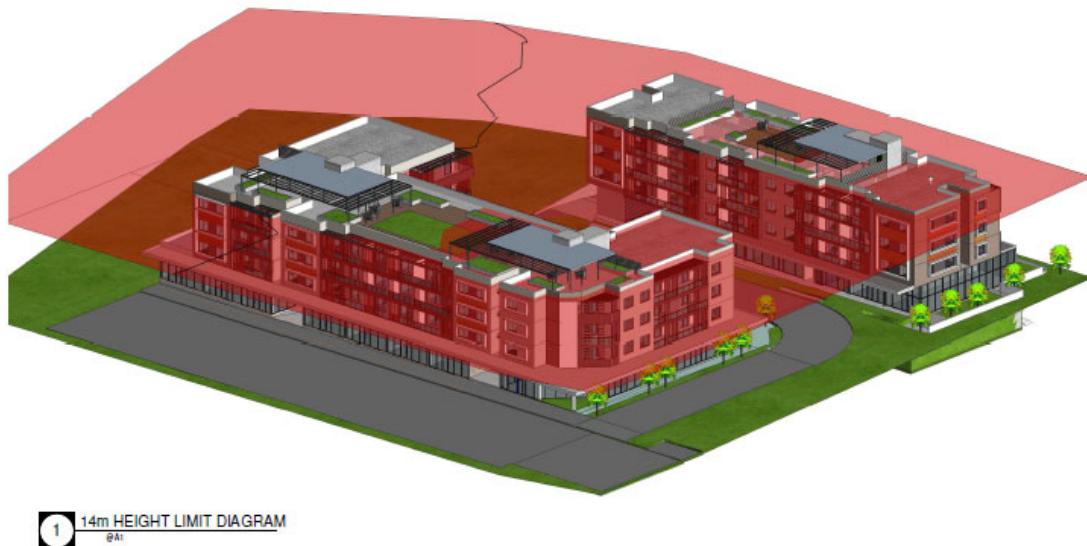
## Council assessment of Clause 4.6 request

### 1 Overview

The applicant has lodged a Clause 4.6 variation submission to vary Clause 4.3 Height of buildings of the Blacktown Local Environmental Plan 2015 which prescribes a maximum height of 14 m for the subject site. A copy of the applicant's Clause 4.6 submission is at attachment 8.

### 2 Visual representation of offset

The following figure from the applicant's architectural plans Issue M dated 11 November 2020 identifies the portions of the development that exceed the 14 m height limit and the portions of the development that are below the height limit. Areas that are below the height limit are shaded red and above the limit are white, grey and black (including rooftop pergolas).

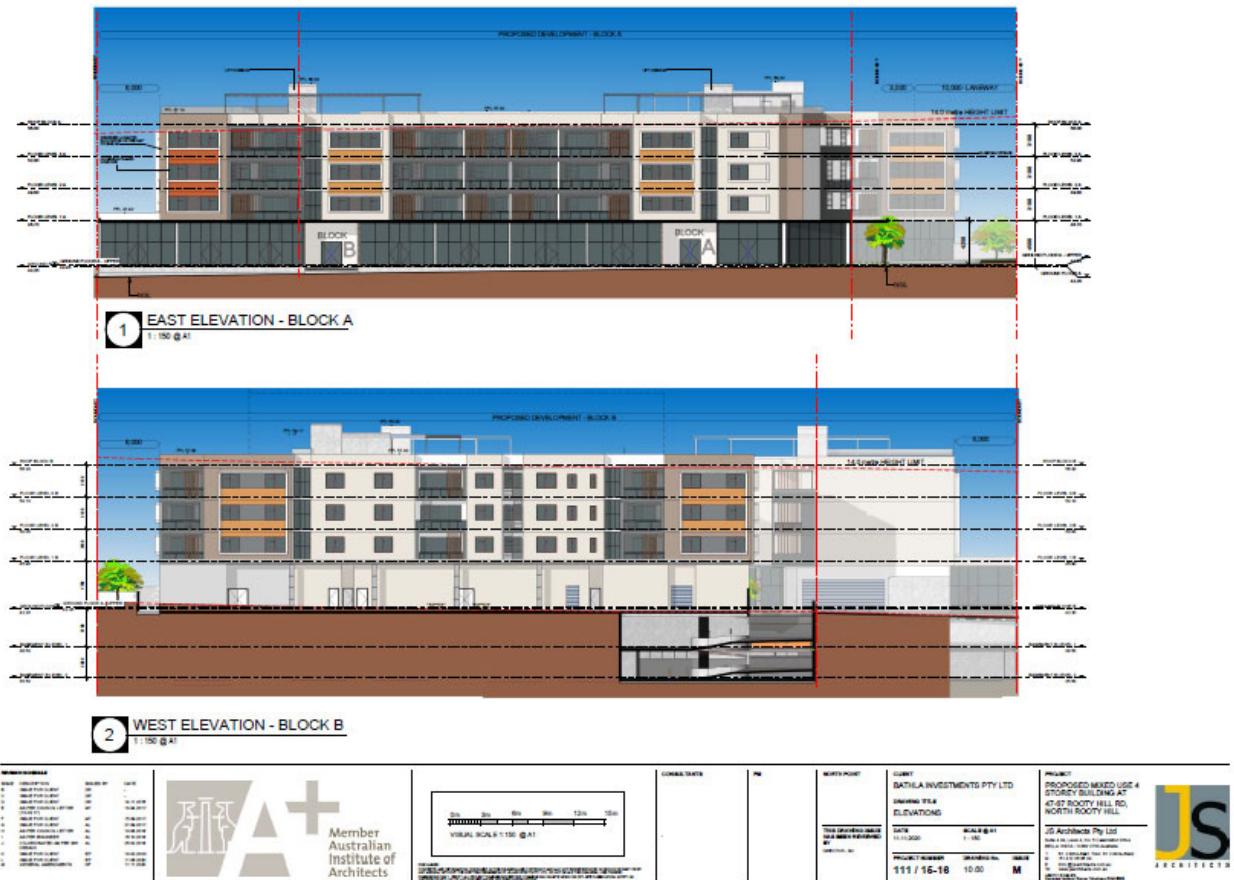


**1 14m HEIGHT LIMIT DIAGRAM**  
@A1

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The proposed non-compliance relates to parts of the roof, the rooftop lifts, stairs, communal open space shade structures and parapets of both proposed buildings. These exceed the height by up to 4.4 m; consequently the proposed building height is 18.4 m at the highest point, due to the provision of rooftop open space and access thereto.

The elevation plans below further illustrate the height non-compliance for each proposed building. The east elevation of Block A shows the frontage to Rooty Hill Road North and the west elevation of Block B shows the rear of the building which adjoins the R2 Low Density Residential land.



### 3 Clause 4.6 variation considerations

Clause 4.6 requires consideration of the following matters and a town planning comment is provided to each item.

#### 3.1 Consideration as to whether compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (Clause 4.6(3)(a))

The underlying purpose of the standard is still considered relevant to the proposal. However, 100% compliance in this circumstance is considered both unreasonable and unnecessary for the following reasons.

In context, this mixed use development proposal, located in a local shopping centre zoned B2 Local Centre, will not have a more adverse impact on adjoining sites than a fully compliant proposal, and full compliance with the 14 m height limit is considered to be unreasonable and unnecessary.

The applicant's shadow analysis diagrams indicate that the proposal does not unreasonably overshadow the adjoining low density residential properties to the west of Building B. Building B levels 1-3 are setback the required 9 m from the property to the west. There is no view loss or significant visual impacts generated by the proposed height exceedance.

The rooftop features that exceed the height limit by the largest amount are the lift overruns and stair structures that provide resident access to the communal open space areas and the shade structures. The shop top housing format located above retail shops within a shopping centre requires private communal open space for residents to be provided on the rooftop. This open space is exposed to the full sun all day, hence shade structures are required, as are the safety parapet/balustrades on the rooftop edge. These building elements, while exceeding the maximum building height development standard, also produce a significant benefit to the overall function and residential amenity of the proposal.

This application is compatible and consistent with the scale of commercial and shop top housing buildings anticipated for the Rooty Hill local centre as outlined in the environmental planning documents discussed at attachment 6.

The proposed encroachments to the overall building height do not result in additional yield in terms of the number of apartments or storeys. The site is also constrained in this potential yield and the location of Buildings A and B, by the need to provide and dedicate to Council the public road extension of Premier Lane through the middle and northern edges of the site.

The proposal provides a better planning outcome because it provides access to rooftop communal space on both buildings with appropriate levels of solar access and shade, suitable recreation areas and privacy amenity for its residential occupants.

### **3.2 Consideration of sufficient environmental planning grounds to justify contravening the development standard (Clause 4.6(3)(b))**

The proposal demonstrates sufficient environmental planning grounds to justify contravening the height of buildings development standard for the following reasons:

- The proposal promotes the orderly and economic use and development of the site because it provides a built form that does not generate any adverse environmental impacts, nor does it result in any increase in residential apartments or density and is therefore considered acceptable in the circumstances. The 4-storey mixed use buildings proposed are an expected outcome of a 14 m height limit development standard.
- The proposal promotes the social welfare of the future community by increasing the residential amenity to the buildings with the proposed rooftop common open spaces on each building.
- The proposed development will provide urban renewal close to good public transport in the local strip shopping centre that is planned for increased development and change. The proposal increases vehicular and pedestrian connectivity in the local centre with the provision of a new planned laneway.
- The proposal does not generate any significant overshadowing or view impacts, considering of the future desired character of the area. The proposal achieves good solar access to units and to common open space for a minimum of 2 hours in mid-winter.

It is considered that the applicant's written request at attachment 8 justifying the contravention of the development standard has adequately addressed the matters required to be demonstrated by Clause 4.6(3).

### **3.3 The objectives of the standard are achieved notwithstanding non-compliance with the standard (Clause 4.6(4)(a)(ii))**

<b>Blacktown Local Environmental Plan 2015</b>	
<b>Objectives of Clause 4.3 'Height of buildings'</b>	<b>How the proposal achieves the objective</b>
a. To minimise visual impact, loss of privacy and loss of solar access to surrounding development and the adjoining public domain from buildings,	Given the compliant setbacks of the proposal, the anticipated overshadowing in the morning of the rear yards of residential properties to the west of the proposal is considered acceptable. The predicted overshadowing is as expected for a 4 storey building on a site with the existing 14 m maximum height of buildings development standard.  The parts of the building causing the largest height non-compliance are the lift overruns, stairs and shading devices accommodating the rooftop communal open areas. These elements are not highly visible from the public domain and do not cause any overlooking issues to neighbours.

Blacktown Local Environmental Plan 2015	
Objectives of Clause 4.3 'Height of buildings'	How the proposal achieves the objective
	<p>The public domain on the streets and on the ground level open spaces of the site receive adequate solar access during the day.</p> <p>Therefore, the visual, privacy and loss of solar access impacts of the proposed building will be minimal and the proposal meets this objective.</p>
b. To ensure that buildings are compatible with the height, bulk and scale of the surrounding residential localities and commercial centres within the City and Blacktown	<p>The maximum height limit for the commercial centre in which the site is located is 14 m, which anticipates a 4 storey building as proposed. This is in keeping with the planning controls for the area, including the Rooty Hill Town Centre Masterplan, that encourage revitalisation of the Centre. The increase in height above 14 m on some parts of the roofs of the 2 proposed buildings will not impact on the density of the development as no residential units are proposed above the height limit.</p> <p>The adjoining rear low density residential properties will be protected by a 9 m setback, with which the proposal complies. Landscaping within deep soil is proposed along this western boundary, which will soften the impact of the change of use and height at this transition point between the business and residential zones.</p> <p>Therefore, the proposed building height is considered compatible with the surrounding residential locality and commercial centre and meets this objective.</p>
c. To define focal points for denser development in locations that are well serviced by public transport, retail and commercial activities	<p>The site is located within the Rooty Hill local shopping centre, approximately 200 m from the existing Rooty Hill Railway Station. The site is on Rooty Hill Road North, which provides good road connection to major centres and employment areas.</p> <p>The site and surrounds will be well serviced for public and private transport, public open spaces and retail and commercial services and thus meets this objective.</p>
d. To ensure that sufficient space is available for development for retail, commercial and residential uses,	<p>The buildings will contain 69 units in the form of studios, 1, 2 and 3 bedroom apartments that are representative of the density and housing demand anticipated for this site.</p> <p>The proposal provides 13 new shops with a total of 1,639 m<sup>2</sup>. The density and land use mix in this proposal thus meets this objective</p>
e. To establish an appropriate interface between centres, adjoining lower density residential zones and public spaces.	<p>The site is at the interface of the low density residential area and the more densely developed local centre. The proposal meets this objective by providing, on levels 1-3, a 9 m setback from the neighbouring residential properties and ground level landscape screening along the boundary between the 2 zones.</p> <p>The location of the rooftop communal open space planting and parapet will protect the privacy of the neighbouring residential properties.</p>

Therefore, the proposal is in the public interest because the development is consistent with the objectives of this particular development standard.

### 3.4 The objectives of the zoning are achieved notwithstanding non-compliance with the standard (Clause 4.6(4)(a)(ii))

Blacktown Local Environmental Plan 2015	
Objectives of the B2 Local Centre zone	How the proposal achieves the objective
a. To provide a range of retail, business, entertainment and community uses that serve the needs of the people who live in, work in and visit the local area.	The proposal includes 13 new shops, all with street frontage that will provide for the future needs of the community, including the residents who live above in the residential component of the buildings.
b. To encourage employment opportunities in accessible locations.	The proposed new 13 ground level shops increase the amount and quality of commercial floor space on the site and will provide more employment opportunities. The site is very accessible with good pedestrian, public transport and road access.
c. To maximise public transport patronage and encourage walking and cycling.	The proposal meets this objective due to its accessible location in an existing centre near the train station and the proposed facilities for bicycle parking. The provision of the extension to Premier Lane will increase pedestrian access and connectivity within the local centre.
d. To encourage the development of an active local centre that is commensurate with the nature of the surrounding area.	The proposal will encourage the renewal of this local Rooty Hill centre, with new shopfronts, potential for new businesses and people living above the centre. The proposal is at a scale anticipated by the local planning controls, including the Rooty Hill Town Centre Masterplan.

Therefore, the proposal is considered to be in the public interest because the development will be consistent with:

- the objectives of the development standard for the height of buildings
- the objectives for development within the B2 Local Centre zone in which this proposal is to be carried out.

### 3.5 The concurrence of the Secretary has been obtained (Clause 4.6(4)(b))

This Clause 4.6 written request to vary a development standard in an Environmental Planning Instrument has been considered in line with Planning Circular PS 08-003. The Secretary (formerly Director-General) of the NSW Department of Planning and Environment's concurrence is assumed as this request is adequate, does not raise any matter of significance for State or regional environmental planning and there is no public benefit of maintaining the standard, as discussed below.

#### 3.5.1 Contravention of the development standard does not raise any matter of significance for State or regional environmental planning [Clause 4.6(5)(a)]

There is no identified outcome that would raise any matter of significance for State or regional environmental planning as a result of varying the development standard as proposed under this application.

#### 3.5.2 There is no public benefit in maintaining the standard [Clause 4.6(5)(b)]

When compared to providing a development that strictly complies with the height of buildings development standard, the impact of the proposal on the surrounding area is of little difference. The proposal offers a social benefit because it provides a better communal open space outcome, with good access and shade for the future residents. The proposal also ensures that new ground level shops with adequate floor to ceiling heights are accessed directly off the street, providing good amenity and street activation, business and job opportunities in the local centre. The new public road, which divides the site, provides a public benefit for the local centre, improving pedestrian and vehicular connectivity, which may encourage

redevelopment of other nearby sites. There is no public benefit in maintaining strict compliance with the development standard in the circumstances of this case.

Based on the above assessment, the Clause 4.6 variation request is considered reasonable and is recommended for support.